

AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1229

Introduced by Assembly Member Simitian
(Coauthors: Assembly Members Correa and Diaz)
(Coauthor: Senator Vasconcellos)

February 21, 2003

~~An act to amend Section 1777.5 of the Labor Code, relating to wages.~~
An act to add Section 12940.5 to the Government Code, relating to sexual harassment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as amended, Simitian. ~~Employment of apprentices~~
Sexual harassment.

Existing law prohibits discrimination and harassment based on sex.

This bill would declare the Legislature's intent that harassment based on the preferential treatment of a paramour may constitute a hostile work environment, and reject the interpretation given to existing law by the California Court of Appeal in Mackey v. Department of Corrections, et al.

~~Existing law provides for the employment of registered apprentices upon public works.~~

~~This bill would make a technical, nonsubstantive change.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 1777.5 of the Labor Code is amended~~

SECTION 1. Section 12940.5 is added to the Government Code, to read:

12940.5. (a) The Legislature hereby reaffirms and declares its intent that harassment in an employment setting based on preferential treatment of a paramour may constitute a hostile work environment. It is the intent of the Legislature in enacting this section to reject the interpretation given to the law by the opinion of the California Court of Appeal in *Mackey v. Department of Corrections, et al.* (2003) 105 Cal.App.4th 945.

(b) For purposes of this article, “harassment” includes preferential treatment by an employer or supervisor of an employee who submits or consents to sexual advances or other conduct of a sexual nature when the preferential treatment is objectively and subjectively sufficient to alter the conditions of the workplace.

~~to read:~~

~~1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.~~

~~(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.~~

~~(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:~~

~~(1) The apprenticeship standards and apprentice agreements under which he or she is training.~~

~~(2) The rules and regulations of the California Apprenticeship Council.~~

~~(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work~~

~~under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (c).~~

~~(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.~~

~~(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.~~

~~(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.~~

~~(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.~~

~~(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated to in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).~~

~~(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from~~

1 the 1-to-5 hourly ratio, as set forth in this section for that craft or
2 trade.

3 (k) An apprenticeship program has the discretion to grant to a
4 participating contractor or contractor association a certificate,
5 which shall be subject to the approval of the Administrator of
6 Apprenticeship, exempting the contractor from the 1-to-5 ratio set
7 forth in this section when it finds that any one of the following
8 conditions is met:

9 (1) Unemployment for the previous three-month period in the
10 area exceeds an average of 15 percent.

11 (2) The number of apprentices in training in the area exceeds
12 a ratio of 1 to 5.

13 (3) There is a showing that the apprenticeable craft or trade is
14 replacing at least one thirtieth of its journeymen annually through
15 apprenticeship training, either on a statewide basis or on a local
16 basis.

17 (4) Assignment of an apprentice to any work performed under
18 a public works contract would create a condition that would
19 jeopardize his or her life or the life, safety, or property of fellow
20 employees or the public at large, or the specific task to which the
21 apprentice is to be assigned is of a nature that training cannot be
22 provided by a journeyman.

23 *(l) When an exemption is granted pursuant to subdivision (k)*
24 *to an organization that represents contractors in a specific trade*
25 *from the 1-to-5 ratio on a local or statewide basis, the member*
26 *contractors will not be required to submit individual applications*
27 *for approval to local joint apprenticeship committees, if they are*
28 *already covered by the local apprenticeship standards.*

29 (m) (1) A contractor to whom a contract is awarded, who, in
30 performing any of the work under the contract, employs
31 journeymen or apprentices in any apprenticeable craft or trade
32 shall contribute to the California Apprenticeship Council the same
33 amount that the director determines is the prevailing amount of
34 apprenticeship training contributions in the area of the public
35 works site. A contractor may take as a credit for payments to the
36 council any amounts paid by the contractor to an approved
37 apprenticeship program that can supply apprentices to the site of
38 the public works project. The contractor may add the amount of the
39 contributions in computing his or her bid for the contract.

~~(2) At the conclusion of the 2003-04 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:~~

~~(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.~~

~~(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.~~

~~(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.~~

~~(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.~~

~~(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.~~

~~(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).~~

1 ~~(p) All decisions of an apprenticeship program under this~~
2 ~~section are subject to Section 3081.~~

O

